

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Revision of the Commission's Rules)	CC Docket No. 94-102
To Ensure Compatibility with)	
Enhanced 911 Emergency)	
Calling Systems)	

To: Chief, Wireless Telecommunications Bureau

REQUEST FOR RULE WAIVER

3 Rivers PCS, Inc. d/b/a 3 Rivers Wireless (3 Rivers), by its attorney, hereby requests a temporary waiver of Section 20.18(c) of the Commission's Rules to allow it to delay implementation of the requirement therein that Broadband Personal Communications Services (PCS) licensees must be capable of transmitting 911 calls, by June 30, 2002, from speech or hearing disabled individuals utilizing Text Telephone Devices (TTY).

The reasons in support of this request are, as follows:

Background

3 Rivers is the licensee of station WPOI209 in the Broadband Personal Communications Service (PCS). Station WPOI209 is a license partitioned from the 30 MHz Block A license granted to GTE Macro Communications Corporation (GTE), on June 23, 1995, for the Spokane-Billings Major Trading Area (MTA). On April 17, 1997, the Commission approved the application to partition to 3 Rivers a portion of GTE's license for the Spokane-Billings MTA, to include the Great Falls, Billings, Bozeman,

Helena and Butte (except for Powell County) Basic Trading Areas. Its licensed service area covers about two-thirds of the state of Montana. 3 Rivers utilizes Nortel Network's CDMA equipment for its PCS network.

In its *Fifth Quarterly Report* on its progress toward achieving TTY access, filed with the Commission last April, 3 Rivers indicated that there appeared to be a great deal of confusion and conflicting opinions with Nortel as to whether TTY compliance could be achieved with the current software load (MTX 9.0) or whether a software upgrade would be required (to MTX 10.0). If the latter, it would be necessary to replace the existing Nortel switch, only four years old, at a combined cost of up to \$1.4 million in switch conversion and facilities costs. The necessity resulted from the fact that Nortel had made a business decision to discontinue manufacture of the existing switch (DMS-100 Dual Load Wireless on Wireline) and to no longer support those switches presently in use. A subsequent meeting scheduled with Nortel was expected to resolve the issue. 3 Rivers notified the Commission that it would be filing for a waiver of the June 30, 2002 compliance deadline if it were determined that it would indeed be necessary to replace the existing Nortel switch. Nortel has since confirmed (in late May of this year) that it would not be possible to create another software load for the existing switch that would take it from MTX 9.0/NBSS9.00 to the required MTX10.0/NBSS10.0, as would be necessary to achieve compliance. Accordingly, 3 Rivers is constrained to request a waiver of Rule Section 20.18(c).¹

3 Rivers' Commitment to Achieving Compliance

Review of its five quarterly reports to the Commission, dating from April 15,

¹ 47 C.F.R. § 20.18(c)

2001, will reveal that that 3 Rivers has been diligent in pursuing timely compliance with the TTY access requirement. In addition to maintaining close contact with its equipment suppliers, 3 Rivers became a member of the Montana State E911 Advisory Council.² In addition, 3 Rivers has been closely following the progress of the Wireless TTY Forum and continues to work with the Montana State School for the Deaf and Blind in connection with equipment testing.³ However, despite its best efforts and due to circumstances beyond its ability to control, 3 Rivers will not be able to meet the June 30, 2002 deadline, established in the Commission's *Fourth Report and Order* in CC Docket No. 94-102⁴ and embodied in Section 20.18(c) of the Commission's Rules. As indicated in the letter from Nortel Networks, dated June 10, 2002, attached hereto as Appendix A, Nortel has yet to provide 3 Rivers with price quotes and delivery information for the new wireless switch that will be required to satisfy the federal mandates for TTY access, E911 Phase II and CALEA, through no lack of diligence on the part of 3 Rivers. The present indication is that firm price and deliver information will not be finalized for another three months, following which it will take another nine months for delivery, testing and deployment of the new switch and for construction of the new central office facilities needed to house the new switch.

Waiver Request

Accordingly, 3 Rivers requests a waiver of Rule Section 20.18(c), to allow it to delay, until June 30, 2003, implementation of the requirement that it integrate, test and

² See, 3 Rivers' *First Quarterly Report*, CC Docket No. 94-102, filed April 15, 2001.

³ See, 3 Rivers' *Third Quarterly Report*, CC Docket No. 94-102, filed October 15, 2001.

⁴ 15 FCC Rcd 25216 (2000), at para. 8, (*Fourth Report and Order*).

deploy the TTY access technology over PCS station WPOI209, in conjunction with the public safety community.

Waiver Standards

While the *Fourth Report and Order* is silent as to what is necessary to justify a waiver of the June 30, 2002 deadline, Section 1.3 of the Commission's Rules⁵ provides that the Commission may waive its rules for good cause shown. In addition, Section 1.925(b)(3) of the Rules⁶ provides, for the Wireless Telecommunications Services (including PCS), that the Commission may grant a request for waiver if it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

3 Rivers Has Met the Waiver Standards

As shown above, 3 Rivers has met the Commission's standards for obtaining the requested waiver of Rule Section 20.18(c). While Section 20.18(c) of the Commission's Rules imposes TTY access obligations only on Commission licensees (by reason of limitations on the Commission's statutory authority), the Commission has repeatedly acknowledged the obvious, namely that achieving full compliance requires the cooperative efforts of carriers, equipment manufacturers and suppliers and government officials responsible for public safety activities. As a service provider only, 3 Rivers is unable to achieve compliance with the Commission's TTY access requirements

⁵ 47 C.F.R. § 1.3

without the availability of necessary equipment and the readiness of the public safety answering points in its area. As the Commission is aware, it is only recently that TTY services have been successfully deployed by any digital wireless carriers.⁷

Notwithstanding, while wireless TTY compatibility services work well for non-emergency communication, there are some remaining issues that exist for emergency situations.⁸ Thus, while Nortel now has a TTY service product that is generally available to digital wireless carriers, it is not yet available to 3 Rivers. For its own reasons, no doubt economic in nature, Nortel has been concentrating on accommodating its large nationwide customers before getting to the needs of carriers in the smaller markets, such as 3 Rivers. This is evident from Appendix A hereto.

In addition, 3 Rivers could not have anticipated the problems and the delays with having to acquire, install and test a new switch because Nortel decided not to upgrade a switch that is barely four years old due to economic reasons that are apparently unrelated to TTY access and other federal mandates. Nor could it have anticipated the delay (aside from the considerable expense) in having expand its existing central office facilities to house the new switch.

The deadline extension herein requested is in the public interest. It will afford 3 Rivers the additional time needed to acquire the new switch and to test its TTY service component, in an orderly manner that is likely to lead to a successful result in providing TTY access. It will not adversely affect the PSAPs in the area or the public served. It is only now that digital TTY handsets are coming on the market and so they are not yet in

⁶ 47 C.F.R. § 1.925(b)(3)

⁷ See, *TTY Forum Consensus Statement Regarding Roll-out of Digital Wireless TTY Services*, filed June 26, 2002 in CC Docket No. 94-102, by the Alliance for Telecommunications Industry Solutions.

widespread use. In addition, there are other carriers in the areas served by 3 Rivers that are capable of providing service to analog TTY handsets. As of this time, no person with a speech or hearing disability has requested service over 3 Rivers' PCS facilities.

Moreover, the stated purpose of Rule Section 20.18(c), namely, "requiring carriers to achieve TTY/digital compatibility at the earliest possible date"⁹ will not be frustrated by granting the waiver herein requested. When the Commission established the June 30, 2002 deadline, digital TTY technology did not even exist.¹⁰ Establishing a date certain by which digital wireless service providers must begin complying with Rule Section 20.18(c) was "needed for the industry to maintain TTY access as a priority."¹¹ While the industry has clearly focused on the issue and has just recently come up with a solution,¹² nevertheless, the Commission should recognize that there are going to be some delays, for one reason or another, before the new technology is fully implemented. In this regard, the Commission has previously acknowledged that equipment delays constitute a justifiable basis for waiving a compliance deadline.¹³

Moreover, the June 30, 2002 deadline was established with the expectation that the equipment and software necessary to achieve compliance would be available by December 31, 2001.¹⁴ As indicated in 3 Rivers' *Fourth Quarterly Report and Waiver Request*, filed December 31, 2001, the necessary software and equipment upgrades were

⁸ *Id.* (Wireless 911 TTY calls may suffer high character error rates (CER) when received by some Public Safety Answering Points (PSAPs).

⁹ *Fourth Report and Order*, at para. 29.

¹⁰ *Id.*, at para. 7.

¹¹ *Id.*

¹² See fn. 7.

¹³ See, e.g., *Roosevelt County Rural Telephone Cooperative, Inc.*, 13 FCC Rcd 22 (1997); and *C, C & S Telco, Inc.*, 6 FCC Rcd 349 (1991), both, as here, involving rural telephone companies.

¹⁴ *Fourth Report and Order*, at para. 8.

not available from Nortel; and it now appears that they will not be available for at least another six months.

The foregoing establishes that 3 Rivers has been diligent in pursuing implementation of TTY service but that it is unable to do so due entirely to matters that are beyond its ability to control. The instant waiver request is specific and focused. It details the unavoidable delays 3 Rivers has encountered through no fault of its own. It sets out a clear path to compliance once the necessary equipment and software become available. It is clear, therefore, that 3 Rivers has shown good cause for the waiver requested and that it has justified the waiver in accordance with Section 1.925(b)(3) of the Commission's Rules.

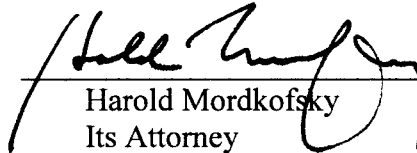
Conclusion

In view of the foregoing, the waiver herein requested is in the public interest and should be granted.

Respectfully submitted,

**3 Rivers PCS, Inc. d/b/a
3 Rivers Wireless**

By:


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Dated: June 28, 2002

APPENDIX A

(Letter from Nortel Networks, dated June 10, 2002)



June 10, 2002

Mr. Craig Bender
3 Rivers Wireless
1211 NW Bypass
Great Falls, MT 59403

Dear Mr. Bender

Nortel Networks regrets the time it is taking to resolve the issue that prevents 3 Rivers Wireless from meeting regulatory requirements such as CALEA, E-911 Phase II and E-911 TTY. As you are aware, the DMS-100W which provides both wire line and wire less services was manufacture discontinued in 2001.

While we have been discussing the need to split the existing switch into two separate switches, Nortel Networks has been slow in providing 3 Rivers Wireless with a price quote. We now feel that we are close to correcting this issue. Nortel Networks is making this price quote a priority and we will provide you with a DMS-100 solution and DMS-10 solution as soon as possible. Once accepted by 3 Rivers Wireless, you will be able to meet the regulatory requirements stated above upon installation of the new DMS.

We apologize for the lengthy delay in assisting 3 Rivers Wireless and your quest to be compliant with regulatory features.

Sincerely

A handwritten signature in black ink, appearing to read "BM", followed by a horizontal line.

Brian Meehan
Senior Sales Executive
Nortel Networks

DECLARATION

Ernest J. Peterson hereby declares, under penalty of perjury under the laws of the United States, that he is the General Manager of 3 Rivers PCS, Inc. d/b/a 3 Rivers Wireless; that he has read the foregoing Request for Rule Waiver to the Federal Communications Commission; and that, except for those facts of which the Commission may take official notice, all of the facts stated therein are true and correct to the best of his knowledge, information and belief.

Dated, this 27th day of June, 2002.


Ernest J. Peterson